The fourth ground of appeal is that the learned President misdirected himself in holding that a corroborative witness was essential to substantiate the fact that the Accused had made a statement false to his knowledge or belief. Corroborative evidence in certain circumstances may be desirable, and it may be so in this case, but it is not essential. PW4 gave evidence that he saw the Accused sign the document which the Accused had denied in the High Court he had signed. It would appear from the learned President's grounds of judgment that he accepted PW4's evidence because, if he had not, then the question of corroboration would not have arisen. If he accepted PW4's evidence then he was entitled, having considered all the aspects of the case, to call upon the Accused for his defence without any corroboration whatever of the evidence of PW4. It appears however from the learned President's grounds of judgment that, although he accepted the evidence of PW4, he came to the conclusion that the evidence adduced was not sufficient to warrant a conviction at the end of the prosecution case simply because as a matter of law corroboration of the evidence of PW4 was essential, and there was no corroboration. In the circumstances of this case it appears to me that the prosecution had made out a *prima facie* case against the Accused at the end of their case and accordingly the learned President should have called upon the Accused for his defence. He would then have been in a position to consider whether the evidence for the defence was sufficient to cast a reasonable doubt on the prosecution case.

In view of the above therefore I quashed the order of acquittal and discharge, and ordered that the case be remitted to the Sessions Court and that the Sessions Court should call upon the Accused to enter upon his defence.

Order accordingly.

REG. v. W. N. HAMMAR

[A. Cr. J. (Shepherd J.) June 21, 1957]

[Penang — Criminal Appeal No. 13 of 1957]

Criminal Procedure — Sentence — Inadequacy — Deterrent effect — Purposes of punishment — Member of visiting Armed Force.

In assessing punishment Magistrates and others should avoid punishments which amount to mere pin-pricks. These are merely annoying or irritating and do not correct or deter.

Question of the punishment of a soldier, a member of a visiting Armed Force on duty here with the express purpose of protecting the citizens of this country, considered.

Case referred to:—

(1) *R. v. Murukaiyan Rasoo* (1957) M.L.J. 26.

MAGISTRATE'S CRIMINAL APPEAL.

F. G. Cooke (Federal Counsel) for the appellant.

Respondent in person.

Shepherd J. : — This is an appeal by the Deputy Public Prosecutor against the inadequacy of the sentence passed by the learned Magistrate, Penang, in dealing with an offence committed by one Walter Neialle Hammar, a member of the Royal Australian Regiment, when he was charged and tried on the following charge :—

"You are charged that you on the 9th day of December, 1956, at about 10.30 p.m. on board the ferry 'Tenggiri' voluntarily caused hurt to one Ong Leng Ah (m) and thereby committed an offence punishable under Section 323 of the Penal Code."

A conviction was entered under section 352 — assault — and the accused was fined $15 and ordered to pay $25 compensation.

The facts are that rather late at night on the 9th December, 1956, when cars, including the car driven by the respondent, were being driven on to the ramp of the ferry boat at Mitchell Pier, Butterworth, the respondent appears to have thought that the car of the complainant Ong Leng Ah (described as a merchant) — a small Hillman car — had jockeyed ahead of him by going on to the ramp first. In any event there seems to be no doubt that the respondent's car bumped against the car of the complainant and when the complainant got out and complained in probably very emphatic terms at this treatment, the respondent is stated to have been abusive and then the following offence appears to have been committed in the manner which I will describe. The complainant took out his notebook and made a note of the respondent's car number. The respondent objected to this and asked if the complainant was going to report to the Police. In the course of this altercation the respondent struck the complainant on the face and tore his shirt. The respondent in evidence before the Magistrate did not admit these facts but stated that he was first struck by the complainant and that he retaliated, but from the prosecution evidence the learned Magistrate believed that it was an unprovoked assault by the respondent. He said in his grounds of judgment :—

"The evidence for the prosecution, which I accepted, clearly shows that defendant committed a somewhat savage and completely unprovoked assault on Ong Leng Ah, a merchant of 444, Penang Road, Penang, as a result of which Ong received a 2" bruise on the cheek and he suffered a stiff neck for a day or two. His shirt was also torn. A medical officer — P.W. 1. — gave evidence that the bruise could have been inflicted by a punch of moderate force."

The learned Deputy Public Prosecutor in urging this appeal referred to the case of *Reg. v. Murukaiyan Rasoo*[1], where Whitton J. stated :—

"I do not think it is open to question that in deciding the appropriate sentence the first and foremost consideration by which the Court should be guided is the public interest."

With this observation I respectfully agree, although as the learned Deputy Public Prosecutor very properly stated that case did not resemble this case at all in degree — it was a more serious case involving stabbing. The learned Magistrate in deciding the sentence stated as follows :—

"I formed the opinion that the very fact that this soldier had been convicted in a Magistrate's Court in this case would in itself tend to deter him from committing further similar offences. I think I am also right in saying that it is usual for convictions in a civil Magistrate's Court to be recorded in a soldier's Record of Service, thus it may well affect his chances of promotion. I should add further that as far as I can recall this is the first case tried by me in which an Australian soldier has been convicted of assault."

I fully sympathise with the learned Magistrate and it is, in fact, extremely difficult to decide how to approach the question of the punishment of a soldier, a member of a visiting Armed Force on duty here with the express purpose of protecting the citizens of this country. The learned editors of *Halsbury's Laws of England*, 3rd edition, Volume 10 at page 487 state as follows :—

"889. **Object of punishment.** The object of punishment is the prevention of crime, and every punishment is intended to have a double effect, namely, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes.

As regards the particular offender there are three ways of providing by punishment against the recurrence of an offence: (1) by taking from him the power of offending (incapacitation); (2) by taking away the desire of offending (reformation); (3) by making him afraid of offending (intimidation).

In some cases, besides providing for the prevention of crimes in future, punishment may also include reparation for the past injury by ordering the offender to compensate the person injured.

As regards other members of the community who are disposed to commit similar offences, the only way of providing by punishment against the commission of the offence is by the deterrent effect which the punishment of an individual has upon others."

I am most concerned in considering this appeal with this last observation, namely, the question of the deterrent effect. Had the learned Magistrate considered it a perfectly trivial matter he could have dealt with the offence under section 183 of the Criminal Procedure Code, sub-section (2) of which reads as follows :—

"(2) When any person is charged before a District Court or Police Court with an offence punishable by such Court, and the Court finds that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may, without proceeding to conviction, make an order either —

(a) dismissing the charge or complaint after such admonition or caution to the offender as to the Court seems fit; or

(b) discharging the offender conditionally on his entering into a bond with or without sureties to be of good behaviour and to appear for conviction and sentence when called upon at any time during such period not exceeding three years, as may be specified in the order."

But, judging by his remarks, he clearly did not consider it trivial — and I agree. I think upon the whole the question of deterrent effect was overlooked and the Deputy Public Prosecutor was right in complaining that the fine was inadequate. It is natural that Magistrates should entertain some sympathy for serving soldiers who are in a foreign country, miles away from their homes, and all should have a very proper respect and admiration for the excellent way which the Armed Forces are performing. Nevertheless, the above considerations must also be borne in mind. In saying this I have constantly before me the axiom that in assessing punishment Magistrates and others should avoid punishments which amount to mere pin-pricks. These are merely annoying or irritating and do not correct or deter. Far better none than these. As indicated in the passage which I have quoted from Volume 10 of *Halsbury's Laws of England* they merely show that the principles underlying punishment have been misunderstood.

That being so I allow this appeal and enhance the sentence by increasing the fine to a fine of $200. The compensation awarded by the learned Magistrate is increased by order of this Court to $75.

Appeal allowed.

HOOI CHUK KWONG v. LIM SAW CHOO (F)

[C. A. (Thomson C.J., Hill and Smith JJ.) October 23, 1957]

[Penang — F.M. Civil Appeal No. 19 of 1957]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 13(1)(k) — Presumption under s. 105(ii) Town Boards Enactment (Cap. 137) — Interpretation of — Exposure to prosecution — If exposure to fine, penalty or forfeiture.

Appellant had been a contractual tenant of a Chettiar on a periodical monthly tenancy for over 25 years.. In 1940 upon the coming into force of Rent and Charged Land (Restriction) Enactment No. 14 of 1940, the premises became controlled premises. In 1950 or 1951 a friend or sub-tenant of the appellant erected a cubicle without the permission of the Chairman, Town Board contrary to section 105(i) of the Town Boards Enactment. He, however, obtained the permission of the appellant and the Chettiar permitted the construction of the structure. Between January 1954 and August 1955 the Health Inspector in charge of the Town Board on various occasions inspected the premises and had reason to believe that it was an unauthorised structure but no prosecution was undertaken because of the acute housing shortage and according to him "The Department just turned a blind eye to erection of cubicles in Telok Anson". The respondent purchased the premises in March, 1955 from the Chettiar and after having obtained from the Rent Assessment Board permission to eject the appellant, instituted action for recovery of the premises. The President, Sessions Court, Telok Anson, dismissed the action. On appeal, reversing the decision of the Court below, the Judge ordered possession to be given to the respondent.

Held, on appeal to the Court of Appeal: on the facts as disclosed the respondent was not at any time "exposed